

Section H

Special Contract Provisions

H.1 Armed Forces Mobilization and Other Contingencies

In the event of troop mobilization or other contingencies the Contractor will be expected to promptly take whatever measures are needed to meet any new demands placed upon it, to include extended work hours and expansion of the contract work force. Extra work effort under these circumstances may entitle the Contractor to equitable adjustment under the Changes Clause FAR [52.243-1 Alt 1](#), *Changes - Fixed Price*.

H.2 Insurance Requirements

H.2.1 Insurance Certificate

Contractor shall deliver or cause to be delivered upon execution of this contract (and thereafter not less than fifteen (15) days prior to the expiration date of each policy furnished pursuant to this contract) to Government a certificate of insurance evidencing the insurance required by this contract.

Note: It is strongly recommended that the Contractor(s) furnish a copy of the following requirements to its insurance company, in order to assure that an insurance certificate is issued meeting the minimum requirements shown.

H.2.2 Types of Insurance

During the entire period this contract shall be in effect, the Contractor shall carry and maintain and require its contractors performing work on the Premises to carry and maintain:

H.2.2.1 General Liability

Comprehensive general liability insurance on an "occurrence basis" against claims for "personal injury" including, without limitation, bodily injury, death, or property damage. Such insurance is to afford immediate protection at all times during the term of this contract. The insurance will include limits of liability in amounts approved by the Government, but not less than \$1 million in the event of bodily injury or death to any one or more persons in one accident and, not less than \$500,000 for property damage.

H.2.2.2 Automobile Liability

Comprehensive automobile liability insurance covering the operation of all automobiles used in connection with the performance of the contract in the minimum limits of \$200,000 per person, and \$500,000 per accident for bodily injury, and \$20,000 per accident for property damage.

H.2.2.3 Workers' Compensation and Employer's Liability

If and to the extent required by law, workers' compensation and employer's liability or similar insurance in form and amounts required by law but not less than the amount of \$100,000.

H.2.3 General

All policies of insurance which this contract requires the Contractor to carry and maintain, or cause to be carried or maintained, pursuant to this contract shall be effected under valid and enforceable policies, in such forms and amounts as may, from time to time, be required under this contract, issued by insurers of recognized responsibility. With respect to Comprehensive General Liability and Automobile Liability insurance policies, the Contractor shall include the Government as additional insured.

Each such policy shall provide that any losses shall be payable notwithstanding any act or failure to act or negligence of Contractor; provide that no cancellation, reduction in amount, or material change in coverage thereof

shall be effective until at least sixty (60) days after receipt by Government of written notice thereof; provide that the insurer shall have no right of subrogation against Government; and be reasonably satisfactory to Government in all other respects.

Under no circumstances will Contractor be entitled to assign to any third party rights of action the Contractor may have against the Government. The foregoing notwithstanding, any cancellation of insurance coverage based on nonpayment of the premium shall be effective upon ten (10) days' written notice to the Government. The Contractor understands and agrees that cancellation of any insurance coverage to be carried and maintained by the Contractor under this contract will constitute a failure to comply with the terms of this contract.

H.2.4. Self-Insurance

The requirements to maintain insurance under [H.2](#) may be met by the use of self-insurance only under the following conditions and with the express prior written approval of the contracting officer:

H.2.4.1

If the contractor desires to self-insure, the contractor shall submit to the contracting officer, in writing, a request to self-insure. To support the determination of the contracting officer regarding the request, the contracting officer may request some or all of the following information, to the extent the contractor maintains such information, on the contractors proposed self-insurance program—

- (1) A complete description of the program, including any resolution of the board of directors authorizing and adopting coverage, including types of risks, limits of coverage, assignments of safety and loss control, and legal service responsibilities;
- (2) If available, the corporate insurance manual;
- (3) The terms regarding insurance coverage for any Government property;
- (4) The contractor's latest financial statements;
- (5) Loss history and premiums history;
- (6) The means by which the self-insurance will be funded;
- (7) Claims administration policy, practices, and procedures;
- (8) The method of projecting losses; and
- (9) A disclosure of all captive insurance company and reinsurance agreements, including methods of computing cost.

H.2.4.2

Programs of self-insurance covering contractor's insurable risks, including the deductible portion of purchased insurance, may be approved by the contracting officer when examination of a program indicates that its application is in the Government's interest; such determination is within the sole discretion of the Government. The Government will not approve a program of self-insurance for workers' compensation in a jurisdiction where workers' compensation does not completely cover the employer's liability to employees, unless the contractor—

- (1) Maintains an approved program of self-insurance for any employer's liability not so covered; or
- (2) Shows that the combined cost to the Government of self-insurance for workers' compensation and commercial insurance for employer's liability will not exceed the cost of covering both kinds of risk by commercial insurance.

H.2.4.3

Once the contracting officer has approved a program, the contractor must submit to that official for approval any major proposed changes to the program. Any program approval may be withdrawn after contract award if the contracting officer finds that either—

- (1) Any part of a program does not comply with the requirements of this part and/or the criteria at FAR 31.205-19; or
- (2) Conditions or situations existing at the time of approval that were a basis for original approval of the program have changed to the extent that a program change is necessary.

H.2.4.4

To qualify for self-insurance, the contractor must demonstrate to the Government an ability to sustain the potential losses involved. In making the determination, the contracting officer shall consider the following factors:

- (1) The soundness of contractor's financial condition, including available lines of credit.
- (2) The geographic dispersion of assets, so that the potential of a single loss depleting all the assets is unlikely.
- (3) The history of previous losses, including frequency of occurrence and the financial impact of each loss.
- (4) The type and magnitude of risk, such as minor coverage for the deductible portion of purchased insurance or major coverage for hazardous risks.
- (5) The contractor's compliance with Federal and State laws and regulations.

H.3 Availability of Funds

Nothing in this contract shall be construed to obligate funds in advance of appropriations.

H.4 Catastrophic Loss

The Contractor shall propose how it plans to protect itself from a catastrophic loss (e.g. natural disasters that could significantly affect the utility systems. If the Contractor has catastrophic insurance, the Contractor shall provide a copy of the coverage to the Administrative Contracting Officer.

H.5 Notification Of Infrastructure/Service Contract Transfer

The Contractor shall provide 120 day written notice prior to any resale, transfer, or encumbrance of the system or any components thereof. Regardless of the disposition of the contractor's property, the utility services contract can only be transferred to another entity with the Government's consent (see FAR 42.1204).

H.6 Foreign Object Damage Prevention Program

All Contractor work in and around any flightline areas must comply with the base's applicable Foreign Object Damage Prevention Program. Prior to starting work in such areas, the Contractor shall contact the assigned COR for scheduling of Contractor personnel for required training.

H.7 Hazardous Substances

The Contractor, at its expense, must comply with all applicable laws on occupational safety and health, the handling and storage of hazardous materials, and the proper handling and disposal of hazardous wastes and hazardous substances generated by its activities.

H.8 Contribution in Aid of Construction (CIAC) Tax Liability

The parties hereby recognize that transactions under the contract may be considered as CIAC. As a result, the Contractor may incur an associated income tax liability.

If the Contractor pays a CIAC tax and desires reimbursement for such payment, the contractor must prove its actual liability for the tax, show that it has asserted all reasonable defenses to payment of the tax, show that the tax has been paid, and separately request reimbursement under this contract.

Offerors should identify any anticipated CIAC tax liability in their Price Proposals.

NOTE: In accordance with the Deputy Secretary of Defense (DEPSECDEF) Guidance on utilities privatization, Oct 9 2002 Revision, CIAC will be treated as a "wash cost" in the economic analysis as compared to the government should cost estimate and in the source selection process.

H.9 Interest Allowability Of Capital Investment

Pursuant to the DoD Class Deviation signed 15 April 2002, the Contractor will be permitted to recover its interest costs associated only with capital expenditures to acquire, renovate, replace, upgrade, and/or expand utility systems.

Contract award must be before April 30, 2007. Interest rates used to calculate allowable interest costs must be limited to 600 basis points above the Contract Disputes Act (CDA) interest rate (41 U.S.C. 611) in effect at the time the contractor makes the capital expenditure. The contractor shall not receive facilities capital cost of money under FAR 31.205-10. CDA interest rate(s) are determined by the Bureau of the Public Debt and are published at the following website: <http://www.publicdebt.treas.gov/opd/opdprmt2.htm>

H.10 Differing Site Conditions

52.236-2 -- Differing Site Conditions (Apr 1984)

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of --

(1) Subsurface or latent physical conditions at the site which differ materially from those indicated in this contract; or

(2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in paragraph (a) of this clause for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

(End of Clause)

H.11 Accounting for Capital Upgrades/Purchase Price

At the request of either party to this contract, and with reasonable cause, the Fixed Monthly charge (Sub-CLIN AA) may be re-negotiated in accordance with Clause [1.6](#), *Type of Contract – Price Redetermination—Prospective*. Only the operations and maintenance and renewals and replacements portion of the Fixed Monthly Charge are eligible for redetermination. However, in accordance with Clause [1.6](#), neither party shall request a change to these service charges to become effective sooner than 2 years from the date of award and every three years thereafter. If new capital upgrades are required as a result of a change in service requirements, the monthly service charge may be re-negotiated, at any time, in accordance with FAR [52.243-1](#) Alt 1, *Changes - Fixed Price*.